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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re A.M., a Person Coming Under the  
Juvenile Court Law.

B212439  
(Los Angeles County  
Super. Ct. No. VJ36694)

THE PEOPLE,

Plaintiff and Respondent,

v.

A.M.,

Defendant and Appellant.

APPEAL from a judgment of the Superior Court of Los Angeles County.

Philip K. Mautino, Judge. Affirmed.

Laini Millar Melnick, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Pamela C. Hamanaka, Assistant Attorney General, Scott A. Taryle and E. Carlos Dominguez, Deputy Attorneys General, for Plaintiff and Respondent.

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The juvenile court sustained a petition against A.M. (minor), age 12, for assault with a deadly weapon and misdemeanor battery, and declared him a ward of the court pursuant to Welfare and Institutions Code section 602.<sup>1</sup> Minor was removed from the physical custody of his mother, and ordered to suitable placement. The juvenile court declared the maximum time of confinement as four years and two months, giving minor credit for 87 days.

Minor contends substantial evidence does not support the trial court's disposition order and argues that the juvenile court should have placed him on probation without declaring him a ward of the court, and should have ordered joint supervision by the probation department and the Los Angeles County Department of Children and Family Services (DCFS). We affirm.

## **BACKGROUND**

### **1. Dependency Proceeding**

In July 2007, DCFS filed a dependency petition under section 300, alleging that minor's father physically abused him and sexually abused his older sister. The juvenile court sustained the petition and declared minor a dependent child of the court. The juvenile court ordered minor to remain in the custody and care of his mother (Mother), and prohibited minor's father from contacting him.

### **2. Delinquency Proceeding**

In August 2008, the district attorney filed a petition under section 602 alleging that minor committed the following offenses: assault with a deadly weapon (count 1; Pen. Code, § 245, subd. (a)(1)), making criminal threats (count 2; Pen. Code, § 422), misdemeanor battery (count 3; Pen. Code, § 243, subd. (a)), and possession of tools to commit vandalism (count 4; Pen. Code, § 594.2, subd. (a)). The parties presented the following evidence at the adjudication hearing:

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<sup>1</sup> All further statutory references are to the Welfare and Institutions Code unless otherwise specified.

*a. Prosecution Evidence*

On August 9, 2008, minor left home without Mother's permission and returned several hours later. When minor attempted to enter the house, Mother locked the door and refused to allow him inside. Minor went to the back of the house and turned off the power. As Mother went outside to turn the power back on, she saw minor in a physical struggle with her boyfriend, Jose S. (Jose).<sup>2</sup>

Mother testified that Jose was holding minor's arms in a way that prevented minor from hitting Jose. Mother heard minor cursing and saying that he would "get back" at Jose. Mother attempted to intervene and fell to the ground, scraping her knees and elbows. Mother called for emergency assistance and deputies from the Sheriff's Department arrived five to 10 minutes later. Mother testified that she did not see Jose hit minor, nor did she see minor use a wrench (or any other weapon) against Jose during their struggle. Mother also testified that minor did not slap her or shove her to the ground.

Deputy Scott Brown testified that when he arrived at the scene, he saw Jose restraining minor against a bench and holding minor's hands.<sup>3</sup> Brown heard minor say to Jose: "I'm going to fucking kill you." After Brown and his partner separated minor and Jose, Brown interviewed Mother. According to Brown, Mother told him that during the struggle, she saw minor strike Jose's head with a 12 inch metal wrench. Mother also told Brown that when she attempted to intervene, minor grabbed her by the arms, threw her to ground, and slapped her face. Brown described Mother's face on that day as red and "puffed up like when someone gets slapped."

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<sup>2</sup> Although Jose S. is an adult, we omit his last name in order to preserve the anonymity of minor.

<sup>3</sup> Brown described Jose as having a slight to normal build and minor as having an extremely slight build.

Deputy Kenneth Felix, Brown's partner, testified that Jose had a bump on the top of his head the size of a quarter. Felix saw no visible injuries on minor. Felix also testified that he saw "tagging" and graffiti on the walls of minor's bedroom.

***b. Defense Evidence***

Minor testified that after he turned the power off, Jose approached him, placed his hand over minor's throat, and pushed him to the ground. Minor took a swing at Jose and missed. Jose then punched minor "hard" on the face six times. After the sixth punch, minor reached for a metal wrench and struck Jose's head with it. Minor dropped the wrench, and he and Jose "exchang[ed] punches." Jose then picked up the wrench that minor had dropped and struck minor's head with it. Minor and Jose began rolling on the ground while Jose began choking minor. Mother attempted to intervene and minor "flinched," causing Mother to lose her balance and fall. Minor testified that Jose choked him with so much force that he had trouble breathing and experienced partial vision loss. Minor's neck, however, showed no physical marks from the choking.

The juvenile court sustained the section 602 petition on count 1 (assault with a deadly weapon) and count 3 (misdemeanor battery). The juvenile court dismissed the remaining two counts.

**3. Disposition Proceeding**

Pursuant to section 241.1,<sup>4</sup> the probation officer filed a report for consideration at minor's disposition hearing. The report contained the following information: minor was an active member of two "tagging crews" and the Pico Viejo gang; he smoked marijuana and drank alcohol approximately four times a week; he was recently expelled for abusing inhalants while at school; he harbored great animosity toward Jose because he believed Jose was the source of conflict between him and Mother. The report noted that Mother

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<sup>4</sup> Section 241.1, subdivision (a) provides that "[w]hen a minor appears to come within the description of both Section 300 and Section 601 or 602, the county probation department and the child welfare services department shall . . . initially determine which status will serve the best interests of the minor and the protection of society. The recommendations of both departments shall be presented to the juvenile court . . . and the court shall determine which status is appropriate for the minor."

had admitted to the probation officer that she could no longer provide minor with appropriate care or insure his sobriety.

In the report, the probation officer recommended that the juvenile court place minor on probation without declaring him a ward of the court, and order joint supervision by the probation department and DCFS. The report explained that joint supervision “would allow the minor to continue to receive beneficial services [through] DCFS . . . while additional supervision from the probation department can help ensure the minor ceases to engage in further criminal acts, follows his DCFS case plan, ceases to use drugs and/or alcohol, and regularly attends school.” The juvenile court considered the report and received it into evidence.

At the disposition hearing, the following individuals addressed the juvenile court:

Minor’s probation officer recommended against returning minor home to the custody of Mother based on her inability to control minor’s behavior. The officer explained that if minor were declared a ward of the court under section 602, the probation department would place him in a group home because foster care was “technically” unavailable to wards of the court. If, however, minor remained a dependent child under section 300, the officer believed that DCFS would pursue the option of placing minor in foster care.

In contrast to the probation officer, the DCFS representative recommended that minor return home to the custody of Mother. He explained that DCFS had been providing services to minor and Mother for the last year, and he was confident that with additional time, minor and Mother would be able to live together in the same home safely and successfully. The representative made no mention of placing minor in foster care.

Minor’s counsel in the delinquency proceeding represented to the juvenile court that Mother had voluntarily placed minor in a drug treatment residential facility in the past. According to counsel, while in this facility, minor was sexually assaulted by other minors in the facility. The facility was independent and not under the control of the probation department. Given minor’s experience at this facility, counsel argued that placing minor in another group setting where he was vulnerable to the same sort of abuse

would be detrimental to his well-being. Counsel urged the juvenile court to place minor at home with Mother.

Minor's counsel in the dependency proceeding, recommended that minor remain a section 300 dependent child and also urged the juvenile court to place minor at home with Mother. As an alternative, counsel recommended placement in a DCFS setting.

The juvenile court declared minor a ward of the court pursuant to section 602, removed him from the custody of Mother, and committed him to the care, custody, and control of the probation officer for suitable placement. The juvenile court then stated the following to minor:

“[Y]ou have to understand, say you are there and you don't like it, and they aren't nice to you and you're having a problem, some kid is giving you a hard time. You tell your mother immediately and I'll have her tell [the deputy public defender], I will bring you back and I promise to bring you right back to my courtroom here, see exactly what's going on and make changes. That's my promise to you. . . . [J]ust tell your mother right away or your attorney or whoever you wish to tell to make sure that I know about it. I will bring you immediately to my courtroom to talk about it with the mother here, and anybody else that your attorney brings in here. We'll make changes. Okay? Now you play it cool there, no problems get a hold of the anger. If you do, give me a good report, I'll get you out of there and send you home.”

Minor timely appealed from the juvenile court's disposition order.

## **DISCUSSION**

### **I. Minor's Argument**

Minor contends the juvenile court abused its discretion by declaring him a ward of the court. According to minor, the juvenile court should have placed him on probation without declaring him a ward of the court, and ordered joint supervision by the probation officer and DCFS, a route that would have allowed him to be placed in foster care.<sup>5</sup>

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<sup>5</sup> Minor does *not* contend on appeal the juvenile court abused its discretion by removing him from the physical custody of Mother.

## **II. Standard of Review**

We review a juvenile court's decision to declare a minor a ward of the court for an abuse of discretion, indulging all reasonable inferences to support its decision. (*In re Antoine D.* (2006) 137 Cal.App.4th 1314, 1320.) "An appellate court will not lightly substitute its decision for that rendered by the juvenile court." (*In re Michael D.* (1987) 188 Cal.App.3d 1392, 1395.) "We must indulge all reasonable inferences to support the decision of the juvenile court and will not disturb its findings when there is substantial evidence to support them." (*Ibid.*)

## **III. Relevant Authorities**

Where, as here, the minor is a person described in section 602,<sup>6</sup> the juvenile court may proceed in one of three ways: (1) declare the minor a ward of the court; (2) order probation without declaring the minor a ward of the court; or (3) order probation after declaring the minor a ward of the court. (§§ 725, subds. (a) & (b), 727; Cal. Rules of Court, rule 5.790, subd. (2) (A–B).)

If the juvenile court declares the minor a ward of the court, it may remove the minor from the physical custody of his parents or guardian and order the care, custody, and control of the minor to be under the supervision of the probation officer. (§§ 726, 727, subd. (a).) The probation officer may place the minor in an approved home of the relative, a suitable licensed community care facility, or a foster family agency, which in turn places the minor in a suitable licensed foster family home or certified family home. (§ 727, subd. (a).)

If the juvenile court places the minor on probation without declaring him a ward of the court, the probation officer may supervise the minor up to six months. (§ 725, subd. (a).) The juvenile court has no authority to impose a condition of probation beyond

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<sup>6</sup> Section 602, subdivision (a), provides in relevant part that "any person who is under the age of 18 years when he or she violates any law of this state or of the United States or any ordinance of any city or county of this state defining crime other than an ordinance establishing a curfew based solely on age, is within the jurisdiction of the juvenile court, which may adjudge such person to be a ward of the court."

this six-month statutory period under section 725(a). “[T]he power of the court with regard to probation is strictly statutory, and the court cannot impose a condition of probation which extends beyond the maximum statutory period of probation.” (*People v. Gilchrist* (1982) 133 Cal.App.3d 38, 44.)

In deciding the appropriate disposition after a minor is found to be a person described in section 602, the court shall consider the circumstances and gravity of the offense committed by the minor in addition to other relevant factors and material evidence. (§ 725.5.) Additionally, courts must also be guided by the purpose of the juvenile delinquency laws, which is two-fold: (1) to serve the best interests of the minor by providing care, treatment, and guidance that is consistent with his best interests, that holds him accountable for his behavior, and that is appropriate for his circumstances and (2) to provide for the protection and safety of the public. (§ 202, subds. (a), (b), & (d); *In re Charles G.* (2004) 115 Cal.App.4th 608, 615; *In re Jimmy P.* (1996) 50 Cal.App.4th 1679, 1684 [“[a] fundamental premise of delinquency adjudication is that the court must focus on the dual concerns of the best interests of the minor and public protection”].)

The juvenile court need not make specific findings on the record. (*In re John F.* (1983) 150 Cal.App.3d 182, 185.) Remand is required only where the juvenile court has demonstrably shown that it misunderstood the scope of its discretion or considered inappropriate factors in declaring a minor a ward of the court. (*In re Michael G.* (1977) 76 Cal.App.3d 872, 875.)

#### **IV. Analysis**

We are satisfied that the trial court acted within its broad discretion in declaring minor a ward of the court under the facts of this case.

We turn first to the circumstances and gravity of the offenses committed by minor, assault with a deadly weapon. There was evidence that minor struck Jose’s head with a metal wrench when Jose was doing nothing more than restraining minor to prevent a physical attack. Additionally, there was evidence that minor warned Jose that he would “get back” at Jose and that he would “kill” Jose, a threat which the trial court was entitled to take seriously.



Second, there was ample evidence demonstrating that minor was not receiving the proper guidance and supervision from DCFS that would hold him accountable for his actions. Minor was an active member in a gang and two “tagging crews,” he regularly smoked marijuana, drank alcohol, and abused inhalants. He had been issued a ticket for fighting at school and even after he was expelled, he returned to campus to pick a fight with another student.

Third, there was evidence from which the juvenile court could infer that minor posed a threat to public safety if his behavior remained unchecked. The probation officer’s report noted that minor had “severe anger issues” and his mother stated that he was “unpredictable, violent, and aggressive when he doesn’t get what he wants.” These behavioral issues, coupled with minor’s involvement in gangs and drugs, certainly implicated a public safety concern.

From this evidence, the juvenile court could have concluded that minor’s best interests required an environment with more discipline and structure than what he was receiving through DCFS services, and that without such discipline and structure, he posed a threat to public safety. (See *In re Michael D.*, *supra*, 188 Cal.App.3d at p. 1397 [affirming juvenile court’s wardship and placement based on similar factors]; *In re Jose R.* (1982) 137 Cal.App.3d 269, 280 [affirming order of wardship and suitable placement for 12-year-old who committed assault with a deadly weapon].) Moreover, from this evidence, the juvenile court could have concluded that supervision by the probation department for a mere six months, the statutory limit, would have been insufficient to correct minor’s escalating behavioral issues, evidenced by his drug use and gang involvement. (*In re Todd L.* (1980) 113 Cal.App.3d 14, 20 [“in planning the conditions of minor’s supervision, the juvenile court must consider not only the circumstances of the crime but also the minor’s entire social history”].) The juvenile court was not required to follow the recommendations contained in the probation officer’s report. (*In re Martin L.* (1986) 187 Cal.App.3d 534, 544.)

We reject minor’s contention that suitable placement, presumably in a group home as indicated by the probation officer, will render him bereft of any type of therapeutic

services. As part of its disposition order, the juvenile court ordered minor to participate in alcohol and drug abuse treatment plans as well as psychiatric testing and treatment. We also reject minor's contention that suitable placement will render him vulnerable to the type of abuse he experienced in the drug treatment residential facility. The facility at which he was sexually abused was not run by the probation department and there is no evidence to suggest that such abuse would occur in a group home in which he would be placed. The juvenile court was keenly aware of minor's situation and emphasized to minor that if anyone threatened him, or even if anyone was "giving [him] a hard time," it would bring minor back to court and reassess his placement.

We conclude by noting that it is not our role to determine what we believe to be the most appropriate placement for minor; that determination is one for the juvenile court. (*In re Khamphouy S.* (1993) 12 Cal.App.4th 1130, 1135.) "An appellate court will not lightly substitute its decision for that rendered by the juvenile court . . . and will not disturb its findings when there is substantial evidence to support them." (*In re Michael D., supra*, 188 Cal.App.3d at p. 1395.) Because substantial evidence exists to support the court's order, we affirm.

### **DISPOSITION**

The judgment is affirmed.

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\_\_\_\_\_, Acting P. J.  
DOI TODD

We concur:

\_\_\_\_\_, J.  
ASHMANN-GERST

\_\_\_\_\_, J.  
CHAVEZ